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8 Attorneys for Defendant Nugget Construction, Inc.

9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE DISTRICT OF ALASKA**
11 **AT ANCHORAGE**

12 UNITED STATES OF AMERICA for the use
13 of NORTH STAR TERMINAL & STEVEDORE
14 COMPANY, d/b/a Northern Stevedoring &
15 Handling, and NORTH STAR TERMINAL &
16 STEVEDORE COMPANY, d/b/a Northern
17 Stevedoring & Handling, on its own
18 behalf,

19 Plaintiffs,

20 and

21 UNITED STATES OF AMERICA for the use
22 of SHORESIDE PETROLEUM, INC., d/b/a
23 Marathon Fuel Service, and SHORESIDE
24 PETROLEUM, INC., d/b/a Marathon Fuel
25 Service, on its own behalf,

Intervening Plaintiffs,

and

METCO, INC.,

Intervening Plaintiff,

vs.

NUGGET CONSTRUCTION, INC.; SPENCER
ROCK PRODUCTS, INC.; UNITED STATES
FIDELITY AND GUARANTY COMPANY; and
ROBERT A. LAPORE,

Defendants.

Case No. A98-009 CIV (HRH)

NUGGET'S RESPONSES TO
NORTH STAR'S SECOND SET OF
DISCOVERY REQUESTS TO
DEFENDANT NUGGET
CONSTRUCTION, INC.

NUGGET'S RESPONSES TO NORTH STAR'S SECOND SET OF DISCOVERY
REQUESTS TO DEFENDANT NUGGET CONSTRUCTION, INC.

*United States ex rel. North Star, et al. v. Nugget Construction,
et al., A98-009 CIV (HRH)*

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COPY

Exhibit B
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1 Pursuant to Federal Rules of Civil Procedure 26, 33
2 and 34, Plaintiff/Use -Plaintiff North Star Terminal and
3 Stevedore Company (hereinafter "North Star") propounds the
4 following discovery requests to Nugget Construction, Inc., the
5 above-named defendant in this action, to be answered in writing
6 within thirty (30) days of service in accordance with the above-
7 referenced rules.
8

9 Any reference in these discovery requests to "you",
10 "your", or "yourself" refers to the above-named defendant in
11 this lawsuit including each of its agents, representatives and
12 attorneys, and each person acting or purporting to act on the
13 behalf of that defendant.
14

15 As used herein, the words "document" and "documents,"
16 or the reference to any type of document or documents, shall
17 mean the original and any copy, regardless of origin or
18 location, of any book, pamphlet, periodical, letter,
19 memorandum, telegram, facsimile, email, report, record, study,
20 handwritten note, map, drawing, working paper, chart paper,
21 graph, index, tape, daily sheet, diary, data or processing
22 card, computer-stored record, business record, financial
23 record, accounting record, correspondence, or any other
24

25 **NUGGET'S RESPONSES TO NORTH STAR'S SECOND SET OF DISCOVERY
REQUESTS TO DEFENDANT NUGGET CONSTRUCTION, INC.**

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1 written, recorded, transcribed, punched, taped, electronically
2 stored, filmed, photographed or graphic matter, however
3 produced or reproduced, to which you have or have had access
4 to.

5 As used herein, the term "representative" means any
6 and all agents, employees, servants, officers, directors,
7 attorneys, or other persons acting or purporting to act on
8 behalf of the person in question including the above-named
9 defendant.
10

11 As used herein, the term "person" means any natural
12 individual in any capacity whatsoever or any entity or
13 organization, including divisions, departments, and other units
14 therein, and shall include, but not be limited to, a public or
15 private corporation, company, partnership, joint venture,
16 voluntary or unincorporated association, organization,
17 proprietorship, other business, trust estate, governmental
18 agency, commission, bureau or department.
19

20 As used herein, the terms "identification",
21 "identify", or "identity", when used in reference to:
22
23
24

25 **NUGGET'S RESPONSES TO NORTH STAR'S SECOND SET OF DISCOVERY
REQUESTS TO DEFENDANT NUGGET CONSTRUCTION, INC.**

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1 (a) A natural individual: requires you to state his
2 or her full name and residential and business addresses
3 and telephone numbers;

4 (b) A corporation, company, or other business,
5 entity or organization: requires you to state its full
6 name and any names under which it does business, its state
7 of formation, the address of its principal place of
8 business, the addresses of all of its offices in Alaska,
9 the identity of the person or persons who own, operate
10 and/or control it, and its telephone numbers;

11 (c) A document or thing: requires you to
12 specifically and sufficiently describe each such item so
13 that it may be located and/or inspected in order to
14 confirm the existence of the item described.

15 The provisions of Federal Rules of Civil Procedure
16 26, 33 and 34 apply in all respects to these discovery
17 requests.

18 GENERAL OBJECTIONS

19 1. Defendant objects to the form of Plaintiff's pleading
20 insofar as it imposes duties beyond those required under Rules
21 33 and 34.

22 2. Defendant objects to all instructions and definitions
23 to the extent they enlarge upon, supersede, or in any way modify
24 the rules of discovery as set forth in CR 26, CR 33 and CR 34.

25 **NUGGET'S RESPONSES TO NORTH STAR'S SECOND SET OF DISCOVERY
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26 OLES MORRISON RINKER & BAKER LLP

27 745 West Fourth Avenue, Suite 502

28 Anchorage, Alaska 99501-2136

29 Tel: (907) 258-0106 Fax: (907) 258-5519

1
2 3. Defendant objects to Plaintiff's requests for
3 production to the extent that they seek documents that are
4 inadmissible and are not relevant to the subject matter of this
5 action, or are not reasonably calculated to lead to the
6 discovery of admissible evidence.

7
8 4. Defendant objects to Plaintiff's interrogatories and
9 requests for production of documents to the extent that they
10 impose an undue burden on the responding party.

11
12 5. Defendant objects to Plaintiff's interrogatories and
13 requests for production of documents to the extent that they
14 seek information that is protected by the attorney-client
15 privilege and work product doctrine.

16
17 6. Defendant objects to Plaintiff's interrogatories
18 insofar as they are directed to knowledge of persons or entities
19 not subject to control of the responding party at the time when
20 these answers were prepared.

21
22 7. Defendants object to Plaintiff's discovery requests to
23 the extent they seek information not pertinent to the present
24 litigation involving the breach of the parties' settlement
25 agreement.

26
27 INTERROGATORY NO. 6: State the first date on which L.

28
29 D. "Randy" Randolph or LDR Engineering Services first became a
30 client of the Oles Morrison Rinker & Baker law firm, by that
31 name or any other name, and state the name and nature of that
32 representation including the court case name and court case
33 number if any.

34
35 **NUGGET'S RESPONSES TO NORTH STAR'S SECOND SET OF DISCOVERY
REQUESTS TO DEFENDANT NUGGET CONSTRUCTION, INC.**

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Defendant Nugget incorporates herein its General Objections stated above. In addition, Nugget objects to this Interrogatory, as it is directed at entities that are neither a party to this litigation nor legally affiliated with Nugget. Further, this Interrogatory is duplicative, as Plaintiff has made this inquiry directly of Mr. Randolph during his second deposition.

Randy Randolph or LDR Engineering Services has been a client of the Oles Morrison Rinker & Baker law firm, by that or any other name, and state the name and nature of each of those representations including the court case name and court case number if any.

Defendant Nugget incorporates herein its General Objections stated above. In addition, Nugget objects to this Interrogatory, as it is directed at entities that are neither a party to this litigation nor legally affiliated with Nugget. Further, this Interrogatory is duplicative, as Plaintiff has made this inquiry directly of Mr. Randolph during his second deposition.

"Randy" Randolph or LDR Engineering Services was first used or designated as an expert witness or consultant for the Oles Morrison Rinker & Baker law firm, by that name or any other name, or any of its clients in any matter and state the name and

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1 nature of that representation, including the court case name and
2 court case number if any.

3
4 ANSWER:

5 Defendant Nugget incorporates herein its General Objections
6 stated above. In addition, Nugget objects to this
7 Interrogatory, as it is directed at entities that are neither a
8 party to this litigation nor legally affiliated with Nugget.
Further, this Interrogatory is duplicative, as Plaintiff has
made this inquiry directly of Mr. Randolph during his second
deposition.

9
10 INTERROGATORY NO. 9: State all other times, by date,
11 Randy Randolph or LDR Engineering Services has been used or
12 designated as an expert witness or consultant for the Oles
13 Morrison Rinker & Baker law firm, by that or any other name, or
14 any of its clients in any matter and state the name and nature
15 of each of those representations, including the court case name
16 and court case number if any.

17
18 ANSWER:

19 Defendant Nugget incorporates herein its General Objections
20 stated above. In addition, Nugget objects to this
21 Interrogatory, as it is directed at entities that are neither a
22 party to this litigation nor legally affiliated with Nugget.
Further, this Interrogatory is duplicative, as Plaintiff has
made this inquiry directly of Mr. Randolph during his second
deposition.

23
24
25 NUGGET'S RESPONSES TO NORTH STAR'S SECOND SET OF DISCOVERY
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1 INTERROGATORY NO. 10: State the date on which Nugget
2 Construction, Inc. and/or any of its employees, officers or
3 directors first became a client of the Oles Morrison Rinker &
4 Baker law firm, by that or any other name, and state the name
5 and nature of that representation including client and court
6 case name and court case number if any.
7

8 ANSWER:

9 Defendant Nugget incorporates herein its General Objections
10 stated above. In addition, Nugget objects to this
11 Interrogatory, as it calls for attorney-client privileged
12 information, and is duplicative, as Plaintiff has made this
13 inquiry during its multiple 30(b)(6) depositions of Nugget.
Without waiving any of its objections, Nugget refers Plaintiff
to the deposition testimony for the response to this inquiry,
and provides the following information:

14 The first time Nugget retained Oles Morrison was in 1996 and
15 related to the bid protest that was filed by another bidder on
16 the project that is at issue in the present litigation.
17

18 INTERROGATORY NO. 11: State all other times, by date,
19 Nugget Construction, Inc. and/or any of its employees, officers
20 or directors has been a client of the Oles Morrison Rinker &
21 Baker law firm, by that or any other name, and state the name
22 and nature of each of those representations including client and
23 court case name and court case number if any.
24

25 **NUGGET'S RESPONSES TO NORTH STAR'S SECOND SET OF DISCOVERY
REQUESTS TO DEFENDANT NUGGET CONSTRUCTION, INC.**
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et al., A98-009 CIV (HRH)

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ANSWER:

Defendant Nugget incorporates herein its General Objections stated above. In addition, Nugget objects to this Interrogatory, as it calls for attorney-client privileged information, and is duplicative, as Plaintiff has made this inquiry during its multiple 30(b)(6) depositions of Nugget. Without waiving any of its objections, Nugget refers Plaintiff to the deposition testimony for the response to this inquiry, and provides the following information:

The first time Nugget retained Oles Morrison was in 1996 and related to the bid protest that was filed by another bidder on the project that is at issue in the present litigation.

Oles Morrison represented Nugget in the Alaska State Court case in which Nugget brought suit against Spencer Rock Products to recover its damages on the project that is at issue in the present litigation. Case No. 3AN-97-9509 Civil.

Oles Morrison represented Nugget before the Armed Services Board of Contract Appeal (Appeal of Nugget Construction, Inc., under Contract No. DACA85-99-C-0017) with regard to a termination for convenience claim on a project for the Army on St. Lawrence Island, AK.

INTERROGATORY NO. 12: State the date on which Nugget

Construction, Inc. and/or any of its employees, officers or directors was first used or designated as an expert witness or consultant for the Oles Morrison Rinker & Baker law firm, by that name or any other name, or any of its clients, and state the name and nature of that representation including client and court case name and court case number if any.

NUGGET'S RESPONSES TO NORTH STAR'S SECOND SET OF DISCOVERY REQUESTS TO DEFENDANT NUGGET CONSTRUCTION, INC.

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ANSWER:

Defendant Nugget incorporates herein its General Objections stated above. In addition, Nugget objects to this Interrogatory, as it calls for attorney-client privileged information, and is duplicative, as Plaintiff has made this inquiry during its multiple 30(b)(6) depositions of Nugget. Without waiving any of its objections, Nugget refers Plaintiff to the deposition testimony for the response to this inquiry.

INTERROGATORY NO. 13: State all other times, by date,

Nugget Construction, Inc. and/or any of its employees, officers or directors has been used or designated as an expert witness or consultant for the Oles Morrison Rinker & Baker law firm, by that or any other name, or any of its clients, and state the name and nature of each of those representations including client and court case name and court case number if any.

ANSWER:

Defendant Nugget incorporates herein its General Objections stated above. In addition, Nugget objects to this Interrogatory, as it calls for attorney-client privileged information, and is duplicative, as Plaintiff has made this inquiry during its multiple 30(b)(6) depositions of Nugget. Without waiving any of its objections, Nugget refers Plaintiff to the deposition testimony for the response to this inquiry.

INTERROGATORY NO. 14: Describe in full detail each

factual basis which supports, or tends to support, the allegations in each of the affirmative defenses stated in your

NUGGET'S RESPONSES TO NORTH STAR'S SECOND SET OF DISCOVERY REQUESTS TO DEFENDANT NUGGET CONSTRUCTION, INC.

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1 Answer and Affirmative Defenses dated September 21, 2005 to
 2 North Star's Amended Complaint.

3 ANSWER:

4 Defendant Nugget incorporates herein its General Objections
 5 stated above. In addition, Nugget objects to this interrogatory
 6 as it is duplicative given the extensive deposition testimony
 taken in this matter that covers many of the inquiries made
 herein.

7 Affirmative Defense No. 1: Plaintiff asks Nugget to provide the
 8 facts constituting the absence of a contract between itself and
 Plaintiff; i.e. it seeks to have Nugget prove a negative. To do
 9 so, Nugget refers Plaintiff to the totality of the discovery
 taken in this case, including the depositions of Nugget's and
 10 Plaintiff's personnel. From that discovery, it is evident that
 there was never a "meeting of the minds" between the parties
 11 required to form a contractual relationship.

12 Affirmative Defense No. 2: The fact that Plaintiff was a
 13 second-tier supplier to a material supplier was decided in the
 9th Circuit decision dated September 27, 2001.

14 Affirmative Defense No. 3: With regard to Nugget and not USF&G,
 this Affirmative Defense is withdrawn.

15 Affirmative Defense No. 4: This Affirmative Defense presents a
 16 legal question under the Miller Act. To the extent Plaintiff's
 claims are not covered under the Act and the cases interpreting
 17 it, they are not recoverable under the Miller Act cause of
 action set forth in Plaintiff's complaint (e.g. tort claims,
 18 punitive damages, attorneys' fees, etc.).

19 Affirmative Defense No. 5: With regard to Nugget and not USF&G,
 this Affirmative Defense is withdrawn.

20 Affirmative Defense No. 6: With regard to Nugget and not USF&G,
 21 the Affirmative Defense relating to "unclean hands" is
 withdrawn. As to the Defense of laches, Plaintiff's waited
 22 seven years from the time the events on the project occurred
 before it amended its complaint to incorporate numerous causes
 23 of action that had not been previously brought. The statute of
 limitations had long ago run on these claims and it is now
 24

25 **NUGGET'S RESPONSES TO NORTH STAR'S SECOND SET OF DISCOVERY
 REQUESTS TO DEFENDANT NUGGET CONSTRUCTION, INC.**

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difficult to reconstruct all of the events surrounding the project.

Affirmative Defense No. 7: With regard to Nugget and not USF&G, this Affirmative Defense is withdrawn.

Affirmative Defense No. 8: Plaintiff's personnel have testified that it was its policy to invoice on a weekly basis for work performed and that 30 days later it would expect payment. On this project, Plaintiff continued to work in spite of the fact that it did not receive timely payment from Spencer Rock Products for the work Plaintiff had performed. By continuing to provide Spencer Rock Products services in the face of non-payment, Plaintiff failed to mitigate its damages. In addition, Plaintiff did not inform Nugget timely of Spencer Rock Product's failure to make timely payment. Once it did so and Nugget informed Plaintiff that Nugget was not responsible for Plaintiff's payments, Plaintiff ceased performing work and incurring additional expenses.

Affirmative Defense No. 9: See response to Affirmative Defense No. 8. In addition, Plaintiff's contract was with Spencer Rock Products. To the extent Plaintiff was owed money and not paid, the responsibility for that lays with Spencer Rock Products. This is especially true with regard to the first two barges of material loaded by Plaintiff, as Spencer Rock Products had been paid as provided for in the contract by Nugget for that effort.

Affirmative Defense No. 10: With regard to Nugget and not USF&G, this Affirmative Defense is withdrawn.

Affirmative Defense No. 11: See response to Affirmative Defense No. 8.

Affirmative Defense No. 12: This Affirmative Defense is on behalf of USF&G, and therefore, this Interrogatory must be addressed to it.

Affirmative Defense No. 13: See response to Affirmative Defense No. 12.

Affirmative Defense No. 14: To the extent Plaintiff's claims arise in contract, punitive damages are legally barred.

Affirmative Defense No. 15: See response to Affirmative Defense No. 8.

NUGGET'S RESPONSES TO NORTH STAR'S SECOND SET OF DISCOVERY REQUESTS TO DEFENDANT NUGGET CONSTRUCTION, INC.

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OLES MORRISON RINKER & BAKER LLP
 745 West Fourth Avenue, Suite 502
 Anchorage, Alaska 99501-2136
 Tel: (907) 258-0106 Fax: (907) 258-5519

1 Affirmative Defense No. 16: Plaintiff's contract was with
 2 Spencer Rock Products, not Nugget. As such, Spencer Rock
 3 Products is responsible for making payment to Plaintiff for any
 4 work performed. Spencer Rock Products was paid \$147,000 by
 5 Nugget for the first two loads of rock, which funds Spencer Rock
 6 Product refused to use to pay its suppliers. To avoid having to
 7 pay its suppliers, Spencer Rock Products intentionally mislead
 8 those suppliers by telling them that it had received no money
 9 from Nugget. Spencer Rock Products also failed to inform its
 10 suppliers that its entitlement to further payment from Nugget
 11 would likely be reduced because of Spencer Rock Product's
 12 inability to produce the required rock for the project and the
 13 necessity of Nugget supplementing Spencer Rock Product's work
 14 force and equipment. Any harm caused to Plaintiff on this
 15 project was the result of Spencer Rock Product's duplicity in
 16 dealing with both Plaintiff and Nugget.

17
 18 INTERROGATORY NO. 15: Completely describe the subject
 19 and contents of the information relevant to this case held by
 20 each person listed on your final witness list due February 14,
 21 2006, herein.

22 ANSWER:

23 Defendant Nugget incorporates herein its General Objections
 24 stated above. Nugget also objects to this Interrogatory as
 25 overbroad, unduly burdensome, cumulative, duplicative, seeking
 attorney-client information, the information can be obtained
 from a source that is more convenient and less expensive, and
 Plaintiff has had ample opportunity over the last eight years to
 obtain the information sought. Nugget has previously provided
 witness disclosures describing the information relating to this
 case possessed by each witness. Subsequently, Plaintiff has
 taken the deposition of the key witnesses listed on Nugget's
 trial witness list. For the information know to those
 witnesses, Nugget refers Plaintiff to the deposition transcripts
 for those witnesses. As to those individuals who work for
 Plaintiffs that Nugget included in its final witness list,
 Plaintiffs certainly have a better ability to ascertain what
 those individuals know about the events surrounding this case

26 **NUGGET'S RESPONSES TO NORTH STAR'S SECOND SET OF DISCOVERY
 REQUESTS TO DEFENDANT NUGGET CONSTRUCTION, INC.**

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1 than Nugget does. Further, much of the information relating to
2 this matter is contained in the documents produced by all
3 parties in this litigation.

4 INTERROGATORY NO. 16: Specifically state the subject
5 matter and content of the anticipated testimony of each witness
6 listed on your final witness list due February 14, 2006, herein.

7 ANSWER:

8 Defendant Nugget incorporates herein its General Objections
9 stated above. In addition, this Interrogatory seeks attorney-
10 client information and work product. The information as to
11 which each witness will testify regarding is a decision made by
12 counsel based in his/her mental impressions of the subject
13 matter and the legal strategies involved in trying the case. As
14 such, they are not subject to discovery. Fed. R. Civ. Pro. 26
15 (b)(3). In addition, as Defendant in this matter, Nugget's
16 case-in-chief will be dictated in some degree by what Plaintiffs
17 put forth in their case and by what issues remain after
18 dispositive motions and motions in limine are ruled upon, which
19 means the expected testimony of Nugget's witnesses is not yet
20 fully ascertainable.

21 REQUEST FOR PRODUCTION NO. 11: Produce any and all
22 unprivileged documents reflecting or otherwise relating to the
23 information requested by Interrogatory Nos. 6 through 16
24 propounded above.

25 ANSWER:

Defendant Nugget incorporates herein its General Objections
stated above. Without waiving its objections, Nugget has
previously produced all relevant, non-privileged documents to
Plaintiffs. Thus, Nugget objects to this Request as being
duplicative and unduly burdensome.

**NUGGET'S RESPONSES TO NORTH STAR'S SECOND SET OF DISCOVERY
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2 DATED: March 20, 2006.

3 BURR, PEASE & KURTZ
4 Attorneys for North Star

5
6 By Michael W. Sewright
7 Alaska Bar # 7510090
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NUGGET'S RESPONSES TO NORTH STAR'S SECOND SET OF DISCOVERY
REQUESTS TO DEFENDANT NUGGET CONSTRUCTION, INC.

*United States ex rel. North Star, et al. v. Nugget Construction,
et al., A98-009 CIV (HRH)*

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0LES MORRISON RINKER & BAKER LLP
745 West Fourth Avenue, Suite 502
Anchorage, Alaska 99501-2136
Tel: (907) 258-0106 Fax: (907) 258-5519

ATTORNEY VERIFICATION

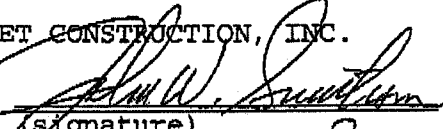
In accordance with Rule 33 (b) (2), I hereby verify that the foregoing objections to the requested discovery are consistent with the Federal Rules of Civil Procedure and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.


Thomas R. Krider, WSBA #29490
Pro Hac Vice
Attorney for Defendant Nugget
Construction, Inc.

OATH

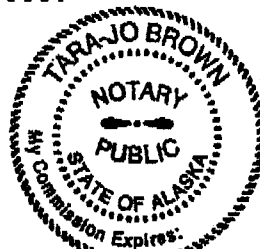
Nugget Construction, Inc., does hereby swear, under oath, that the foregoing answers to discovery requests are true to the best of its knowledge and belief.

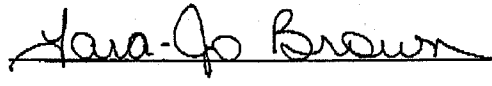
NUGGET CONSTRUCTION, INC.

By: 
(signature)
Printed Name: JOHN W. SMITHSON
Its: PROJECT MGR
(title)

SUBSCRIBED AND SWORN to before me this 20 day of

March, 2006.




NOTARY PUBLIC FOR _____
My commission expires: _____
My Commission Expires
November 5, 2009

NUGGET'S RESPONSES TO NORTH STAR'S SECOND SET OF DISCOVERY REQUESTS TO DEFENDANT NUGGET CONSTRUCTION, INC.
United States ex rel. North Star, et al. v. Nugget Construction, et al., A98-009 CIV (HRH)
Page 16 of 17
45-40/#82043

P-TRK Responses to North Star's Second Discovery Requests 032006 993100002

CERTIFICATE OF SERVICE

I certify that on the 20th day
of March 2006, a copy of the
foregoing was served by U.S.
Mail on:

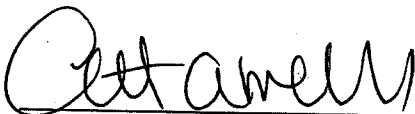
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REQUESTS TO DEFENDANT NUGGET CONSTRUCTION, INC.

United States ex rel. North Star, et al. v. Nugget Construction,
et al., A98-009 CIV (HRH)

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